

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

In the Matter of:

NATHAN G.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH No. L 2006040014

**DECISION**

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, in Alhambra, California, on July 28, 2006.

Felipe Hernandez, Chief of Consumer Services, represented Eastern Los Angeles Regional Center (Service Agency).

Nathan G. (Claimant) was present and was represented by Bertha G., his mother, and Francisco G., his father. The parties presented oral and documentary evidence and submitted the matter for decision on July 28, 2006.

**ISSUE**

Does Claimant have a substantial developmental disability that makes him eligible for services provided by the Service Agency under the Lanterman Act (the Act), Welfare and Institutions Code<sup>1</sup> section 4500 et seq.?

**FACTUAL FINDINGS**

1. Claimant is a six-year-old boy who lives with his parents and his two sisters. He was walking at 11 months of age and putting together two-word sentences at

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<sup>1</sup> All further references are to the Welfare and Institutions Code, unless specified otherwise.

age 18 months. At approximately age 30 months, his parents observed that he was withdrawn, which they brought to the attention of their pediatrician, who said, “Don’t worry.” In approximately July 2003, Claimant was hit by a car. The car mirror struck him in the head, but he did not lose consciousness. He was taken to the hospital, which evaluated and released him the same day. Also in July 2003, Claimant’s pediatrician referred him to a specialist at Kaiser Permanente, Claimant’s medical provider, to be assessed for attention deficit hyperactivity disorder (ADHD). Claimant’s mother, however, did not want to start Claimant on medication at the time because of his young age.

2 Claimant’s parents continued to be concerned about Claimant’s impulsive behavior, difficulty following directions, difficulty in transitioning from preferred to non-preferred activities, and need for constant supervision. His mother reported that, when he started pre-school, he was running away from class. He would not listen or pay attention. He would run into the street and would not care about automobile traffic. She was very concerned for his safety. His kindergarten teacher noted that he was fine when the classroom work was structured, but he had difficulty staying on topic during class discussions, he needed re-direction of the teacher, and he was prone to emotional outbursts when frustrated, to the point of crying and loud wailing. Claimant’s mother also reported some self-injurious behaviors, like hitting his hand and stomach with his hand. It is reported that Claimant is aggressive towards his peers at school, including pushing, talking loud, calling his peers names, and yelling. He will initiate interactions with his peers, but then he does not know what else to say, and eventually he walks away.

3. Claimant’s parents first sought an assessment by the Service Agency in 2004 to determine whether Claimant was eligible for services based on a diagnosis of autistic spectrum disorder. On September 14, 2004, the Service Agency’s specialist, clinical psychologist Thomas L. Carrillo, Ph.D., performed a psychological evaluation and diagnosed Claimant with mixed receptive-expressive language disorder. Dr. Carrillo concluded that “[a]lthough Nathan displays some ‘soft’ autistic-like characteristics, these symptoms or behaviors are not at an intensity nor do they surpass the threshold to support a formal diagnosis within the autistic spectrum disorder range.” Specific test results showed Claimant’s intellectual abilities were within the normal range, his receptive and expressive language abilities were within the borderline range, and his overall adaptive abilities were within the mild range of delay. In December 2004, the Service Agency determined Claimant was not eligible for services.

4. In November 2004, Kaiser Permanente performed a multi-disciplinary developmental team evaluation. The team found, based on Claimant’s history and current patterns of behavior, Claimant fit the criteria for a diagnosis of autism. They found Claimant was functioning below his age peers (moderate delayed) in adaptive, gross and fine motor, and personal social skills. He had severe language delays, and his composite score of 61 on the Vineland Adaptive Behavior Scales indicated across-the-board delays in adaptive functioning. On the Childhood Autism Rating Scale, Respondent scored 33, with a score of 30 or more being consistent with autism.

5. In April 2005, the school district within which Claimant resided conducted a psycho-educational evaluation. Relying in part on the Kaiser team's findings, as well as their own assessments and reports, the school district team concluded that Claimant appeared to meet the eligibility guidelines for special education under the category of "Autistic-Like Behaviors." As a result, in May 2005, the school district amended Claimant's individual educational plan (IEP) to change Claimant's eligibility category for special education from specific learning disability to autistic-like behaviors. The goals and objectives of the IEP remained the same.

6. Claimant's parents again requested the Service Agency to perform an assessment for eligibility. Larry E. Gaines, Ph.D., performed a psychological evaluation on November 11, 2005. Dr. Gaines observed that Claimant "was able to engage in a conversation that was reciprocal in nature," "although it was observed that he had some restriction in language quality and structure, suggestive of a language disorder." Claimant was "extremely cooperative on test tasks. He showed good attention and was only occasionally a bit impulsive at first, but settled down when asked to do so. He showed excellent responsiveness to praise, again indicating good social engagement." Dr. Gaines further reported his diagnostic impressions as follows:

Nathan is currently functioning within the borderline range of intellectual ability. Evaluation of test scatter suggests higher intellectual potential, which was determined on previous evaluations to fall in the average range of performance. Nathan continues to present with significant expressive, and to some extent, receptive, language difficulties. Although some autistic like behaviors are reported, not only did I not observe any of these behaviors during today's testing session, but explanations of these behaviors could have other meanings, and not necessarily reflect Autism. This is particularly noteworthy in that mother herself reports that Nathan can be fine on some days, and have these behavioral difficulties on others.

Dr. Gaines concluded with the same diagnosis as Dr. Carrillo.

7. In 2005-2006, Claimant was enrolled at Gardenhill Elementary School in a general education first grade class. The school district provided para-educator support, both in the classroom and on the playground, modified assignments, speech and language services, occupational therapy services, and a behavior support plan. Although there has been growth in math, and Claimant loves reading activities, he remains two years below academic grade level. At the end of this past school year, the team members of Claimant's IEP determined that Claimant's behavior problems may be a function of lack of success in the general education classroom and frustration with his peers working above his ability level. Therefore, they agreed that Claimant will be starting in a special day classroom at a different school in September 2006. (Whereas, Dr. Gaines had recommended a general education classroom for Claimant.)

8. Dr. Randi Bienstock is a psychological consultant for the Service Agency who specializes in neuro-developmental disabilities. She reviewed the various reports and information provided by Claimant's family, his school, test results and the other information adduced by psychologists and others. She testified at the administrative hearing that it is clear Claimant needs assistance and interventions for his problem behaviors, but in her opinion, the data does not support a diagnosis of autistic spectrum disorder. She also noted that the findings of "autistic-like behaviors" are not the equivalent for meeting the criteria for a diagnosis of autistic spectrum disorder.

9. Dr. Bienstock observed that Claimant is described as a cute and friendly boy who maintains good eye contact. He initiates and desires to socialize with peers, but has trouble with appropriate social play. He is basically interested and cooperative with adults. He asks for what he wants. He has difficulties expressing himself, and with some evaluators, he showed slight reticence in having a conversation, but Dr. Bienstock believes these behaviors appear more indicative of a language disorder. She referred to two hallmark features of autism: a person with autism is not interested in praise, and a person with autism does not change from one day to the next. She noted that, in Dr. Gaines's evaluation report, he observed behaviors that were not consistent with either of these features. Dr. Bienstock stated that impulsivity, and delaying gratification, were not the hallmark issues of autistic spectrum disorder. She believes that some of Claimant's symptoms are consistent with ADHD, but she did not offer a diagnosis.

## LEGAL CONCLUSIONS

1. Claimant has the burden of proof as to each fact necessary to establish his eligibility for services provided by the Service Agency. (Evid. Code § 500.)

2. Section 4512, subdivision (a), states:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

3. Claimant has problem behaviors and a language disorder which will require ongoing assistance and intervention to resolve. The preponderance of the evidence, however, does not establish that Claimant has a developmental disability within the meaning of section 4512, subdivision (a). On most of the scales on which Claimant

has been tested, his intellectual ability falls within the normal to borderline range. Although he has shown some autistic-like behaviors, most of the professional opinion thus far seems to agree that his behaviors are not of the intensity to meet the threshold criteria for a diagnosis of autistic spectrum disorder. Claimant's functional limitations in language, his poor socialization skills, as well as his problem behaviors, which hopefully are being addressed through his individual educational plan, do not exist to the degree that makes him eligible for services under the Lanterman Act.

#### ORDER

Claimant's appeal of the Service Agency's determination that he is not eligible for services is denied.

Dated: August 10, 2006

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.